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August 12, 1996

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Local Multipoint Distribution Service
CC Docket No. 92-297

Dear Mr. Caton:

On behalf of CellularVision Technology and Telecommunications, L.P., enclosed please find an original and four (4) copies of Comments filed in response to the Fourth Notice of Proposed Rulemaking in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,

Michael R. Gardner
Charles R. Milkis
Counsel for CellularVision Technology and Telecommunications, L.P.

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	)	CC Docket No. 92-297

COMMENTS OF CELLULARVISION TECHNOLOGY AND TELECOMMUNICATIONS, L.P.

CellularVision Technology and Telecommunications, L.P., ("CT&T") by its attorneys, hereby files Comments in response to the Fourth Notice of Proposed Rulemaking ("Fourth NPRM") (FCC 96-311) adopted July 17, 1996 in the above-referenced proceeding.

I. INTRODUCTION

CT&T is majority owned by the inventors of the CellularVision[TMSM] LMDS technology, Shant Hovnanian, Vahak Hovnanian and Bernard Bossard, who for ten years have pioneered the development of the multi-faceted LMDS technology; in addition, Philips Electronics North America Corporation, a leading high tech participant in the domestic and global marketplace, holds a minority interest in CT&T. CT&T licenses the CellularVision technology for LMDS to CellularVision USA, Inc., a holding

company publicly traded on the NASDAQ National Market under the symbol "CVUS," and through CVUS to CellularVision of New York, L.P., which is the only commercially licensed LMDS provider in the United States.[1] Because of its commitment to the fullest deployment of the revolutionary CellularVision LMDS technology, CT&T respectfully submits its views on the issues raised by the Commission in the Fourth NPRM.

II. ELIGIBILITY OF LECs AND CABLE OPERATORS TO HOLD LMDS LICENSES

CT&T believes that the Commission should restrict the ability of local exchange carriers ("LECs") and cable operators to hold attributable interests in LMDS licenses throughout the 493 BTAs in the United States and its territories. CT&T strongly concurs with the Commission's observation that LMDS is a potentially important source of competition to both LECs and cable operators. Moreover, CT&T believes that the enormous competitive potential of LMDS will be realized only if LMDS systems are owned and operated by an entirely new set of competitors to LECs and cable operators throughout the United States.

If local exchange carriers ("LECs") and cable operators are permitted to hold attributable interests in LMDS licenses, CT&T believes there is a substantial risk that

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[1] CellularVision of New York, L.P., currently operates a commercial LMDS video service as an alternative to cable television in the New York Primary Metropolitan Statistical Area in the 27.5-28.5 GHz band pursuant to a commercial license granted by the Commission in 1991. See Hye Crest Management, Inc., 6 FCC Rcd 332 (1991). Pursuant to Commission authorization finally granted in December 1995, CellularVision is in the midst of an aggressive build-out and currently passes approximately 900,000 households in its service area.

these providers could use their LMDS licenses in an anti-competitive manner. Even if that is not the case, CT&T is concerned that in the hands of these providers, LMDS would be at most merely a "niche" technology used as an ad hoc supplement or filler to the LEC's or cable operator's wire-based infrastructures. As a result, it is likely that LECs and cable operators would use LMDS licenses for specific, limited non-competitive applications. As simply another tool in the arsenal of local service providers, CT&T is concerned that the revolutionary potential of LMDS would not be fully realized in those BTAs licensed to either LECs or cable operators.

CT&T, as the owner of the CellularVision LMDS technology, has an obvious interest in seeing the most vigorous deployment of full-blown LMDS, both in the United States and throughout the world. CT&T believes that LMDS provides a unique opportunity for new entrants who acquire LMDS licenses to provide genuine facilities-based competition to established service providers in the two-way video, voice and data services markets.[2] To the extent that LECs and cable MSOs are restricted from holding LMDS licenses, and to the extent that the Commission adopts a realistic definition of "small business" and provides small businesses with generous bidding credits in spectrum auctions, the ability of entrepreneurial new players with an

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[2] CT&T's position is bolstered by the comments of the U.S. Small Business Administration, which has stated, "[t]he allocation of spectrum for LMDS represents another opportunity for the Commission to ensure that small businesses can be players in the burgeoning field of wireless communication . . . LMDS can provide an excellent and low-cost means of providing small businesses with expanding their opportunity to provide wireless telecommunication services." Letter from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to Chairman Reed E. Hundt, June 8, 1995.

incentive to maximize the potential of LMDS will be enhanced.

Accordingly, in order to ensure that LMDS is able to promptly realize its fullest potential as competition to LECs and cable operators, CT&T believes that the Commission should adopt comprehensive restrictions that prohibit LECs and cable operators from bidding on or acquiring attributable interests in any LMDS license.

III. ALLOCATION OF ADDITIONAL UNENCUMBERED SPECTRUM FOR LMDS

In the First Report and Order, the Commission has allocated a total of 1 GHz in the 28 GHz band for LMDS: 850 MHz primary from 27.5-28.35 GHz, and 150 MHz co-primary with Mobile Satellite Services from 29.1-29.25 GHz for hub-to-subscriber transmissions only.[3] In view of the encumbered nature of the 150 MHz, however, the Commission has concluded in the Fourth NPRM that "[i]n order to ensure that there is adequate two-way interactive capacity for the various proposed LMDS systems, we recognize the need to designate additional spectrum for LMDS."[4]

CT&T fully supports the Commission's commitment to allocate additional unencumbered spectrum for LMDS, including spectrum below 27.5 GHz and spectrum in the 31 GHz band. While the Commission's discussions thus far with NASA regarding use of some portion of the spectrum below 27.5 GHz for LMDS purposes have not been productive, CT&T applauds the Commission's commitment to continue those discussions which hopefully will involve objective testing to support co-

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[3] First Report and Order, para. 42.

[4] Fourth NPRM, para. 100.

frequency sharing with the government that CT&T believes is possible.

Additionally, CT&T supports the Commission's proposal to designate, on a primary protected basis, the 31.0-31.3 GHz band to LMDS for two-way transmissions. While the 31 GHz band is considered by many to be a new frontier for LMDS use, CT&T believes that the certainty of an allocation of that spectrum for LMDS will serve as a catalyst for the research and development necessary for the LMDS industry to create commercially viable uses of the 31 GHz spectrum together with the proven application of 28 GHz LMDS services.[5] Communications industry leaders like Philips, that have pioneered innovative uses of the spectrum, can be expected to devote resources to the development of new equipment and applications for LMDS once this 300 MHz in the 31 GHz band is available for use together with the 1 GHz of 28 GHz spectrum already allocated for LMDS by the Commission in the First Report and Order.

CT&T further supports the Commission's proposal to assign the 300 MHz in the 31 GHz band and the 1000 MHz in the 28 GHz band together as a single block as 1.3 GHz licenses per BTA. CT&T agrees with the Commission's view that the allocation of the unencumbered 31 GHz spectrum is necessary to compensate for the encumbered nature of the 150 MHz from 29.1-29.25 GHz, so that a licensee will have sufficient spectrum to realize the potential of LMDS. Moreover, CT&T believes

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[5] If the Commission formally allocates the 31.0-31.3 GHz band for LMDS, it should provide licensees with appropriate flexibility in deploying services utilizing that spectrum in view of the period of technological development necessary before technically and commercially viable uses of the 31 GHz spectrum are developed.

that the licensing of LMDS in 1.3 GHz blocks per BTA will encourage the maximum development of LMDS as a broadband competitor to numerous services, and discourage the use of LMDS as merely a niche service.

CT&T is hopeful that the Commission will conclude the Fourth NPRM promptly with the allocation of additional spectrum for LMDS, and then commence auctions of 28 GHz LMDS spectrum together with that additional spectrum before the end of 1996. The licensing of LMDS nationwide in 1996 is vital to the deployment of LMDS and the potential of this innovative technology to compete in the local telephone and cable television marketplaces; accordingly, if the Commission faces significant delay in concluding the allocation of additional spectrum for LMDS, the Commission should nonetheless commence auctions of the 1 GHz in the 28 GHz band before the end of 1996, with subsequent auctions of any additional spectrum later allocated for LMDS.

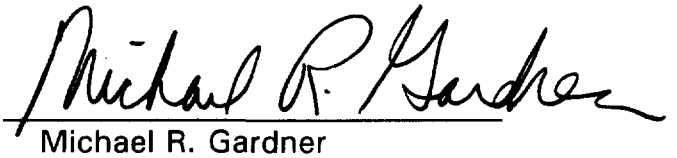
IV. CONCLUSION

CT&T applauds the Commission's commitment to the prompt nationwide deployment of LMDS, a proven, broadband wireless technology that is poised to immediately provide interactive video, telephony and data service competition to telco and cable providers throughout the United States. However, to fully realize LMDS's tremendous potential, CT&T believes that the Commission should prohibit LECs and cable operators from holding attributable interests in LMDS licenses. Since LMDS is intended to compete with telcos and cable operators, the Commission must ensure that LMDS licenses are held only by a new wave of entrepreneurs.

Additionally, the Commission must allocate sufficient unencumbered spectrum for LMDS to be able to compete with telcos and cable operators, and CT&T supports the Commission's efforts to allocate spectrum below 27.5 GHz as well as 300 MHz in the 31.0-31.3 GHz band for LMDS. CT&T is optimistic that the Commission will allocate additional unencumbered spectrum for LMDS promptly, so that auctions of 28 GHz LMDS spectrum coupled with the 300 MHz of 31 GHz spectrum in single 1.3 GHz licenses per BTA can commence in 1996. If, however, the Commission faces significant delay in allocating additional spectrum for LMDS, it should commence auctions of the 1 GHz of 28 GHz LMDS spectrum in 1996, and subsequently auction additional spectrum allocated for LMDS.

Respectfully submitted,

CellularVision Technology & Telecommunications, L.P.

By: 

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August 12, 1996

Certificate of Service

I, Ryan J. McCumber, hereby certify that copies of the foregoing "Comments of CellularVision Technology and Telecommunications, L.P." were delivered by hand, on August 12, 1996, to the following:

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Commissioner
Federal Communications Commission
1919 M Street, NW, Room 802
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Hon. Susan Ness
Commissioner
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1919 M Street, NW, Room 832
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Hon. Rachelle B. Chong
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